

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

V.

SHELL CHEMICAL YABUCOA, INC.,

Defendant.

CIVIL ACTION NO.
3:09-cv-1019

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act (the “Act”), 33 U.S.C. § 1319(b) and (d), for injunctive relief and civil penalties against Shell Chemical Yabucoa, Inc. (“Shell” or “Defendant”). Specifically, Shell has discharged pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), has violated and continues to violate certain terms and conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued to Shell by EPA pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and has failed to report monitoring results in violation of Section 308 of the Act, 33 U.S.C. § 1318.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395 because Shell is located, and the alleged violations occurred, in this judicial district.

4. Notice of the commencement of this action has been given to the Commonwealth of Puerto Rico pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

PARTIES

5. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of the EPA.

6. Defendant Shell is a corporation duly organized under the laws of the Commonwealth of Puerto Rico, with its principal offices located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico 00767.

7. Shell Chemical Yabucoa, Inc. is the named permittee for NPDES Permit No. PR0000400 ("Permit"), which governs the discharges to the Caribbean Sea and Santiago Creek from the petrochemical facility located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico 00767 ("Facility").

8. At all times relevant to this Complaint, Shell has owned and/or operated and continues to own and operate the Facility, including, *inter alia*, the wastewater collection systems, storm water collection systems, wastewater treatment plants, discharge outfalls, and

related appurtenances at which the Clean Water Act violations alleged in this Complaint occurred and continue to occur.

STATUTORY AND REGULATORY BACKGROUND

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person, except in compliance with the requirements of that section and as authorized by, and in compliance with, a NPDES permit issued pursuant to the permit issuing authority provided for in Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source”

11. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include solid waste, sewage, chemical wastes, and biological materials.

12. Section 502(11) of the Act, 33 U.S.C. § 1362(11), defines the term “effluent limitation” as “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters”

13. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including its territorial seas.

14. Part 122 of Title 40 of the Code of Federal Regulations, promulgated under the Act to regulate the NPDES permit program, defines “waters of the United States” to include, in relevant part, “[a]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide,” and tributaries to such waters. 40 C.F.R. § 122.2(a) and (e).

15. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” as any discernible, confined and discrete conveyance including, *inter alia*, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

16. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA (“Administrator”) may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the Act. Typically such permits include effluent limitations, monitoring and reporting requirements, and operating and maintenance requirements.

17. Section 402(a)(2) of the Act, 33 U.S.C. § 1342(a)(2), provides that “[t]he Administrator shall prescribe conditions for such permits to assure compliance with the requirements of [Section 402(a)(1)], including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.”

18. Pursuant to 40 C.F.R. § 122.41(e), a standard condition in all NPDES permits, including the NPDES permit governing the facility at which violations are alleged herein, states that “[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

19. Pursuant to 40 C.F.R. § 122.41(m), a standard condition in all NPDES permits, including the NPDES permit governing the facility at which violations are alleged herein,

defines “bypass” as “the intentional diversion of waste streams from any portion of a treatment facility” and further specifies that bypasses are prohibited and EPA “may take enforcement action against a permittee for bypass” unless, *inter alia*, “[t]here were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities [or] retention of untreated wastes”

20. Section 402(i) of the Act, 33 U.S.C. § 1342(i), states that nothing in Section 402 of the Act shall limit the authority of EPA to take enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

21. Section 402(k) of the Act, 33 U.S.C. § 1342(k), provides that conforming with a Section 402 permit shall be deemed compliance with Section 301 for the purposes of satisfying Section 309 of the Act.

22. Section 309(a)(3), (b) and (d) of the Act, 33 U.S.C. § 1319(a)(3), (b) and (d), authorize the Administrator to commence a civil action for injunctive relief and for civil penalties for each violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation implementing, *inter alia*, Section 301 of the Act, 33 U.S.C. § 1311, and contained in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

GENERAL ALLEGATIONS

23. Shell is a “person” within the meaning of the Section 502(5) of the Act, 33 U.S.C. § 1362(5).

24. Shell’s Outfall 001 and Outfall 002 are “point sources” which “discharge [] pollutants” into “navigable waters,” all within the respective definitions provided in Section 502(14), (12), and (7) of the Act, 33 U.S.C. § 1362(14), (12), (7).

25. Shell's Facility is operated pursuant to NPDES Permit No. PR0000400 issued by EPA under authority of Section 402(a) of the Act, 33 U.S.C. § 1342(a), and the terms of the Permit were and are in full force and effect during the relevant time period of the violations alleged herein. The Permit became effective November 1, 2000 and was scheduled to expire on October 31, 2005, but has been administratively extended and remains in full force and effect.

26. At all times relevant to this Complaint, Shell was and is the named permittee for the Permit authorizing discharges from Outfall 001 and Outfall 002 at the Facility.

27. The Permit issued to Shell authorizes the discharge of pollutants into the Caribbean Sea from Outfall 001 and into Santiago Creek from Outfall 002. The Permit specifies that the discharge through Outfall 001 shall consist of, *inter alia*, process wastewater, cooling system blow down, contaminated storm water, sanitary wastewater, and uncontaminated storm water. Shell's Permit requires the deep seawater discharge from Outfall 001 to be diffused, thereby creating a mixing zone.

28. The Permit authorizes discharges of waters composed entirely of uncontaminated storm waters through Outfall 002. Outfall 002 discharges into Santiago Creek, which flows into the Caribbean Sea.

29. In addition, the Permit sets effluent limitations for various pollutants contained in the effluent from Outfalls 001 and 002 and requires Shell to monitor for those pollutants at specified frequencies and using specified sampling methodologies.

30. Shell's Permit specifically prohibits bypasses, defined as an intentional diversion of waste streams from any portion of a treatment facility, and states that EPA may take enforcement action against Shell for a bypass, unless certain conditions are met.

31. The Permit also imposes operation and maintenance requirements upon the Facility, namely that Shell shall at all times properly operate and maintain all facilities and systems of treatment and control, including related appurtenances, that are installed or used to achieve compliance with the terms of the Permit. The Permit further requires Shell to inspect the Outfall 001 discharge system, including the diffuser and ports, at least once per year to determine whether any repairs or other maintenance are necessary to maintain the system in good operating condition.

32. Pursuant to the Permit, Shell is required to submit monthly Discharge Monitoring Reports (“DMRs”) to EPA. Each DMR must include monitoring results obtained during the previous month. If Shell monitors any pollutant more frequently than required by the Permit, the results of that monitoring must be included in the monthly DMR.

SPECIFIC ALLEGATIONS

33. In or about October 2002, while performing a Mixing Zone Validation Study Survey pursuant to the Permit, Shell’s contractor, Continental Shelf Associates, Inc., discovered a rupture in the deep seawater pipeline leading to Outfall 001, approximately 1,500 feet from the shoreline in the Caribbean Sea. Treated wastewater containing pollutants was being discharged through the pipeline rupture. The rupture was temporarily fixed on or about February 26, 2004, and repaired on or about June 16, 2004.

34. On or about January 5, 2004, Shell’s contractor, Commercial Divers, Inc., noticed an absence of discharge through the deep seawater pipeline at Outfall 001. On or about January 12, 2004, the contractor found a rupture in the Outfall 001 discharge pipeline, not in the deep seawater, but near the shoreline where the pipeline crosses Santiago Creek, a tributary of the

Caribbean Sea. Treated wastewater containing pollutants was being discharged through the pipeline rupture. The rupture was temporarily fixed on or about February 26, 2004, and repaired on or about June 16, 2004.

35. The pipeline leading to Outfall 001 that ruptured in the Caribbean Sea and ruptured near the shoreline where the pipeline crosses Santiago Creek is a “point source” that “discharge[d] . . . pollutants” into “navigable waters,” all within the respective definitions provided in Section 502(14), (12), and (7) of the Act, 33 U.S.C. § 1362(14), (12), (7).

36. As part of its wastewater treatment process, the Facility’s 3-Cell API Unit Oil/Water Separator (“3-Cell”) receives storm water runoff that has been in contact with the Facility’s process areas, resulting in contaminated storm water. Under normal operating conditions, contaminated storm water is partially treated in the 3-Cell and then flows through the Facility’s wastewater treatment plant and is ultimately discharged through Outfall 001. During certain rain events, however, Shell intentionally diverts contaminated storm water from the 3-Cell into the Facility’s Flood Control Pond, which is subsequently discharged through Outfall 002 to Santiago Creek, the outfall permitted for the discharge of uncontaminated storm water only.

37. The intentional diversion of contaminated storm water from the 3-Cell to the Flood Control Pond constitutes a bypass, which is prohibited by the Permit and 40 C.F.R. § 122.41(m). In addition, any discharge of contaminated storm water from the Flood Control Pond through Outfall 002 to Santiago Creek constitutes an unpermitted “discharge of pollutants” from a “point source” into “navigable waters,” all within the respective definitions provided in Section 502(12), (14), and (7) of the Act, 33 U.S.C. § 1362(12), (14), and (7).

38. On or about March 7, 2003, Shell's contractor, Commercial Divers, Inc., conducted inspection activities related to the deep sea rupture of the Outfall 001 pipeline. During these inspection activities, Commercial Divers, Inc., found that the diffusion ports in the pipeline to Outfall 001 were clogged with sand and other seabed matter and a significant portion of the end of the pipeline for Outfall 001 was buried, both of which impeded proper discharge through the diffuser system, thereby deteriorating the mixing zone. The clogs persisted from at least on or about March 7, 2003 to at least on or about April 12, 2004. These problems reveal instances of Shell's failure to operate and maintain the proper functioning of the pipeline and the multi-port diffuser.

FIRST CLAIM FOR RELIEF
(Unlawful Discharge: Deep Seawater Pipeline into the Caribbean Sea)

39. The allegations set forth in Paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. From at least in or about October 2002 until at least on or about February 26, 2004, Shell discharged treated wastewater containing pollutants from the pipeline rupture into the Caribbean Sea.

41. The discharges from the pipeline rupture consisted of treated wastewater containing pollutants, and constitute discharges at an unpermitted discharge point in violation of Section 301 of the Act, 33 U.S.C. § 1311.

42. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Debt Collection Improvement Act of 1996, Shell is liable for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF

(Unlawful Discharge: Deep Seawater Pipeline into Santiago Creek)

43. The allegations set forth in Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. From at least January 5, 2004, until at least February 26, 2004, Shell discharged treated wastewater containing pollutants from the pipeline rupture into Santiago Creek.

45. The discharges from the pipeline rupture consisted of treated wastewater containing pollutants, and constitute discharges at an unpermitted discharge point in violation of Section 301 of the Act, 33 U.S.C. § 1311.

46. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Debt Collection Improvement Act of 1996, Shell is liable for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF

(Unlawful Bypass and Discharge: 3-Cell API Unit Oil/Water Separator)

47. The allegations set forth in Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. On several occasions since at least April 2003, Shell reported intentional diversions of contaminated storm water from the 3-Cell to the Flood Control Pond, and related unpermitted discharges through Outfall 002 to Santiago Creek.

49. The intentional diversions of contaminated storm water from the 3-Cell to the Flood Control Pond, and the related unpermitted discharges through Outfall 002, contain pollutants including solids, petroleum compounds, metals, chemical oxygen demand, and low

levels of dissolved oxygen.

50. Each intentional diversion of contaminated storm water from the 3-Cell into the Flood Control Pond constitutes a bypass of the Facility's wastewater treatment plant and a violation of the Permit and 40 C.F.R. § 122.41(m). In addition, each related discharge through Outfall 002 constitutes a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

51. Upon information and belief, Shell will continue to bypass the Facility's wastewater treatment plant by intentionally diverting contaminated storm water from the 3-Cell to the Flood Control Pond, and continue to make unpermitted discharges through Outfall 002, unless restrained by this Court.

52. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Shell is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

FOURTH CLAIM FOR RELIEF
(Operations and Maintenance Violations)

53. The allegations set forth in Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. From at least on or about March 7, 2003 until at least on or about April 12, 2004, Shell failed to operate and maintain the proper functioning of the Outfall 001 pipeline and the multi-port diffuser as required by the Permit.

55. The operations and maintenance deficiencies at the Facility constitute a failure to meet a condition or limitation of the Permit as required by 40 C.F.R. § 122.41(e) and in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

56. Upon information and belief, Shell will continue to violate the operations and maintenance requirements contained in the Permit unless restrained by this Court.

57. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Shell is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF
(NPDES Permit Effluent Limit Violations)

58. The allegations set forth in Paragraphs 1 through 57 are realleged and incorporated herein by reference.

59. On numerous occasions since at least February 2002 and continuing to the present, Shell discharged pollutants from Outfall 001 and Outfall 002 into navigable waters in excess of effluent limitations prescribed in the Permit.

60. Shell reported violations of Permit effluent limitations for Biochemical Oxygen Demand, Copper, Dissolved Oxygen, Manganese, Nitrogen, Oil and Grease, pH, Selenium, Total Suspended Solids, and Zinc.

61. Each discharge of a pollutant in excess of an effluent limitation contained in the Permit constitutes a violation of the Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

62. On each day that Shell violated more than one of the effluent limitations contained in the Permit, each exceedance of an effluent limitation constitutes a separate violation of the Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

63. Upon information and belief, Shell will continue to violate the effluent limits contained in the Permit unless restrained by this Court.

64. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Shell is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

SIXTH CLAIM FOR RELIEF
(Failure to Report Violations)

65. The allegations set forth in Paragraphs 1 through 64 are realleged and incorporated herein by reference.

66. On several occasions since at least on or about September 18, 2004, Shell failed to report monitoring results, including violations of Permit effluent limitations, in its monthly DMRs, in violation of the Permit, 40 C.F.R. § 122.41(l) and Sections 301, 308, and 402 of the Act, 33 U.S.C. §§ 1311, 1318, 1342.

67. Upon information and belief, Shell will continue to violate the reporting requirements contained in the Permit unless restrained by this Court.

68. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Shell is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that:

1. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each unlawful discharge of a pollutant into waters of the United States from an unpermitted discharge point resulting from ruptures of the Outfall 001 effluent pipeline at Santiago Creek and

in the Caribbean Sea, civil penalties of up to \$27,500 per day for each violation of the Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

2. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each bypass resulting from the intentional diversion of contaminated storm water from the 3-Cell to the Flood Control Pond, civil penalties of up to \$27,500 per day for each violation of the Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

3. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each unpermitted discharge of pollutants through Outfall 002 into Santiago Creek, a water of the United States, civil penalties of up to \$27,500 per day for each violation of the Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

4. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each failure to operate and maintain the proper functioning of the Outfall 001 pipeline and the multi-port diffuser as required by the Permit, civil penalties of up to \$27,500 per day for each violation of the Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

5. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each discharge of a pollutant in excess of effluent limitations prescribed in the Permit, civil penalties of up to \$27,500 per day for each violation of its Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

6. Shell be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each violation of the reporting requirements prescribed in the Permit, civil penalties of up to \$27,500 per day for each violation of its Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

7. Shell be permanently enjoined, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), from any and all future violations of the Act and of the Permit, and from discharges of pollutants except as authorized by permit under Section 402 of the Act, 33 U.S.C. § 1342.

8. This Court grant the United States such other and further relief as it deems just and proper.

Respectfully submitted,

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Dated: January 12, 2009

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